

**BEFORE THE
NATURAL RESOURCES COMMISSION
OF THE
STATE OF INDIANA**

IN THE MATTER OF:)	Administrative Cause
)	Number: 14-007E
READOPTION OF 312 IAC 18:)	
ENTOMOLOGY AND PLANT)	
PATHOLOGY)	(LSA Document #14-105(F))

RECOMMENDATION FOR FINAL ACTION ON READOPTION OF RULE

A. INTRODUCTION

For consideration, is the readoption of 312 IAC 18, which provides standards for the control of pests or pathogens. 312 IAC 18 can be accessed through the Indiana General Assembly's website at: <http://www.in.gov/legislative/iac/T03120/A00180.PDF>.

312 IAC 18 is proposed to be readopted in its entirety and without amendment. Under 312 IAC 2-2-4(b), where the rules are being readopted in their current form without amendments, the Director of the Division of Hearings may approve preliminary action. The Commission retained authority to take final action on readoptions.

The Director of the Division of Hearings approved preliminary action on March 19, 2014. The standard practice is to readopt rules by article, and 312 IAC 18 is now submitted for consideration as to final action.

B. READOPTION ANALYSIS REQUIRED UNDER IC 4-22-2.5-3.1 AND IC 4-22-2.1-5

Megan Abraham, Fumigation and Compliance Inspector, DNR's Division of Entomology and Plant Pathology, was appointed Small Business Regulatory Coordinator for the rule readoption. She provided the following analyses of potential impacts to small business for the proposed readoption of 312 IAC 18:

Review under IC 4-22-2.5-3.1

SMALL BUSINESS IMPACT STATEMENT (EIS)
LSA Document # 14-105

The continued need for the rule.312 IAC 18-1

This rule provides the definitions needed to implement the rules in 312 IAC 18. Thus, this rule is needed to follow IC 14-24 and to support the work and requirements in 312 IAC 18 which is the article that supports the agriculture, horticulture, and silviculture industries' ability to provide pest and pathogen free products. All businesses subject to Article 18 will be subject to the rule. The businesses are not subjected negatively or positively by the rule.

312 IAC 18-2

312-IAC 18-2 establishes the procedures to declare an infested area and to create, issue, and terminate a quarantine under IC-24-14-3 and IC 24-14-4. Thus, this rule serves as the foundation for the prevention, management and eradication of pests or pathogens that impact the plant and bee industries in Indiana. This rule allows for and supports quarantines for thousand canker disease (312 IAC 18-3-24), gypsy moth (312 IAC 18-3-14), and emerald ash borer (312 IAC 18-3-18) in the State of Indiana. This rule also provides right of entry for staff in the Division of Entomology and Plant Pathology for survey and regulatory purposes. The rule will continue to be used and is needed to create quarantines for other pests or pathogens that infest and threaten the horticultural, agricultural, apicultural, silvicultural and other natural resources of Indiana. International and national trade moves pests and pathogens quickly and unintentionally into new areas. For this reason, this rule is needed to manage potential pests and pathogens as many are major threats to our natural resources and plant industry.

312 IAC 18-3

There is a continued need for 312 IAC 18-3 as this rule identifies current pests or pathogens and establishes standards for the control of these pests within the State of Indiana. This rule allows the Division of Entomology and Plant Pathology (DEPP) to restrict movement of regulated materials within the state thereby reducing the spread rate of these pests and decreasing the potential damage to industry and natural resources. This rule identifies regulated articles for each of the invasive species in Indiana and documents regulatory control measures and restrictions placed on these articles. The rule will continue to be used by DEPP, plant industry and the public to determine what steps to take to decrease the likelihood of inadvertently or artificially spreading pests and pathogens.

312 IAC 18-4

312 IAC 18-4 provides for the regulation of nurseries, nursery dealers, and agents. It also ensures that nurseries are inspected regularly by the Division of Entomology and Plant Pathology (DEPP). These routine inspections allow DEPP to certify that the plants in Indiana's nurseries are apparently free of pests and pathogens and vital. The cultivation of pest and pathogen free nursery stock allows the nurseries and nursery dealers to sell and move plants intrastate and interstate. The required licensing and certification imposed by the rule as well as the associated costs are necessary to maintain the quality of Indiana's horticultural industry. The spread of insect and disease pests can have a major economic impact of the State's horticultural and agricultural industries as well as the State's natural resources. This rule is needed to allow trade in the horticultural industry. The rule assists the horticultural industry to grow and sell healthy plants in Indiana and into other states. Without

this rule, nurseries and businesses could not sell plants to businesses or customers in other states. Other states, as does Indiana, will prohibit Indiana plants unless they have the certification provided by this rule.

312 IAC 18-5

Rule 312 IAC 18-5 “Special Services Fees” establishes fees for special services provided by the Division of Entomology and Plant Pathology (DEPP). The fees are deposited in the DEPP fund to support the division for services rendered. These services include voluntary certification for florists or greenhouses, laboratory work requested by the public, phytosanitary documents, and certification of herbaceous perennials transported to another state.

The special service fees are necessary to maintain the quality of Indiana’s horticultural industry. The services provided by the DEPP aid in the prevention of the spread of pests and pathogens. The spread of pests and pathogens has significant economic impacts on the State’s horticultural and agricultural industries as well as the State’s natural resources. The phytosanitary documents allow vendors in Indiana to transport or sell plant material to other states and countries. Without the phytosanitary documents, these vendors would incur trade restrictions which would be monetarily detrimental to their business as they would not be able to sell product to customers outside of Indiana.

312 IAC 18-6

312-IAC 18-6 protects the intellectual and technical knowledge of a business that may be contained in any permits and/or documents submitted to comply with requirements of 312-IAC 18. This ensures that vendors can submit the information needed to meet the requirements to issue a permit or certification and remain protected. This rule assists in the maintenance of business and commerce associated with the businesses impacted by 312-IAC 18. This rule is needed to comply with IC 14-24-3 and aid agricultural, horticultural and other plant industry businesses in the protection of their intellectual property.

There is a continued need for these rules.

The nature of any complaints or comments received from the public, including small businesses, concerning the rule or the rule's implementation by the agency.

312 IAC 18-1

There have been no complaints or comments received from the public concerning Rule 1 Definitions.

312 IAC 18-2

Complaints and comments relate to the understanding of the requirements of a quarantine where applied by this rule. The comments and complaints usually involve the restrictions placed on small businesses in moving regulated materials from quarantined areas to non-quarantined areas. In other cases, the mandatory destruction of certain materials in order to enforce the quarantine can cause loss of revenue. However, the destruction of ash trees under the emerald ash borer quarantine and eradication project only resulted in a minimal number of complaints and was accepted by the public and small businesses.

312 IAC 18-3

Complaints and comments relate to the understanding of the requirements or restrictions where applied by this rule. The comments and complaints usually involve the restrictions placed on small businesses in moving regulated materials from quarantined areas to non-

quarantined areas. In other cases, the mandatory destruction of certain materials in order to enforce quarantines and prevent spread, creates comments and complaints related to loss of revenue.

Positive comments are also received from the public in relation to the rule. Public education and outreach regarding the rule lead to understanding by the public of why these measures are enacted and the outcomes associated with reducing the spread of invasive species in Indiana. This leads the public to be appreciative and supportive of the measures that DEPP takes in reducing the spread of these pests and pathogens.

312 IAC 18-4

Several nurseries and greenhouses have stated their appreciation for the services provided by the DEPP. Without these routine inspections many small businesses would not be allowed to sell their product to other states. Other states have rules that require plants to be pest and pathogen free if sold or brought into their state. The inspections also bring potential pest and pathogen problems that might have been previously overlooked to the attention of the nursery owner. The DEPP is then able to educate the grower on methods to control the pest or pathogen in question. Occasionally, some small businesses owners are not appreciative of the services provided by the DEPP. These clients are disapproving of government oversight into their operations and look upon these inspections as a burden.

312 IAC 18-5

Businesses in Indiana appreciate the rule and its existence as they are able to certify their plant materials pest and pathogen free. This allows them to broaden their customer base to an international market as long as they meet the requirements of the country or state to which they are shipping. The Memorandum of Understanding with the USDA/APHIS that allows DEPP to provide Indiana businesses with federal phytosanitary certificates reduces the potential lag time in which a business would have to wait to get an inspection completed by USDA/ APHIS.

312 IAC 18-6

There have been no complaints or comments received from the public or small businesses in reference to this rule. This rule is not used on a regular basis. Small businesses have asked questions and asked for clarification regarding the rule's ability to protect confidential business information provided in permit and certification applications.

The complexity of the rule, including any difficulties encountered by:

(A) the agency in administering the rule; or

(B) small businesses in complying with the rule.

312 IAC 18-1

The definitions in this rule are stated well and not complex. The agency has no difficulty in administering the rule and small businesses have no difficulty complying with the rule.

312 IAC 18-2

312-IAC 18-2, by itself, is not complex or convoluted. The creation of a quarantine and associated compliance requirements may become complex and difficult for the public and small businesses to understand. However, information and education programs help overcome the complexity, and placing businesses under compliance agreements helps businesses understand the quarantine and what measures they are to perform and comply.

312 IAC 18-3

Administering and complying with the rule may be difficult for small businesses, the public, and the DEPP. The largest problem the public has in complying with the rule stems from the lack of knowledge that the rule and its stipulations exist. However, information and education programs help overcome the complexity, and placing businesses under compliance agreements helps businesses understand a quarantine and the requirements of the rule.

312 IAC 18-4

This is not a complex rule. The Indiana Professional Licensing Agency issues all nursery licenses and certificates. This system allows all of the information on the nurseries in Indiana, as well as the status of fees collected, to be centralized and easily accessible to staff. The only difficulty small businesses have in complying with the rule is that many of the new nurseries and nursery dealers are unaware of the rule. There are many small nursery dealers in the State of Indiana that are operating without a nursery dealer's license because they do not realize that this rule exists. Once notified of the rule and the requirements of that rule they usually comply and continue to renew the license each subsequent year. Other parts of this rule, namely the proper maintenance of a nursery and the correct labeling of nursery stock are not complied with because businesses are unaware of these requirements. The DEPP continues to educate these vendors as time and resources allow.

312 IAC 18-5

This is not a complex rule and the DEPP does not have difficulty in administering the rule. The only difficulty the public has in complying with the rule is that they are sometimes unaware that this and other rules exist. The average person is not aware that a phytosanitary certificate is needed to transport plant materials outside of the State of Indiana, especially plant materials that may harbor plant pests and pathogens that are not already native to the destination state or country. The DEPP continues to conduct public awareness activities through outreach activities and educational campaigns.

312 IAC 18-6

312-IAC 18-6 is not complex or convoluted and no difficulties have been encountered by the DEPP or a small business.

The extent to which the rule overlaps, duplicates, or conflicts with other federal, state, or local laws, rules, regulations, or ordinances.

312 IAC 18-1

There is no overlap, duplication, or conflict with other state or local laws, regulations or ordinances. The rule compliments definitions in similar federal laws and does not provide conflicts in applying the rule.

312 IAC 18-2

This rule complements and works with federal quarantine rules and the Plant Protection Act of 2000. The rule does not overlap, duplicate or conflict with other state or local laws or rules.

312 IAC 18-3

This rule complements and works with federal quarantine rules and the Plant Protection Act of 2000. The rule does not overlap, duplicate or conflict with other state or local laws or rules.

312 IAC 18-4

This rule does not overlap, duplicate or conflict with other laws, rules or regulations. Without this rule in place, several vendors in Indiana would not be able to transport their product across state lines. The nursery inspections ensure that the materials do not harbor plant pests or pathogens and therefore are able to be moved to other states and in some cases other countries.

312 IAC 18-5

This rule does not conflict with federal, state or local rules and regulations. Through a Memorandum of Understanding the DEPP is able to assist the USDA/APHIS with the issuance of federal phytosanitary certificates for businesses in Indiana. This allows small businesses in Indiana to sell stock to customers in other countries without relying solely on the USDA/APHIS. The federal phytosanitary program does differ from the DEPP in the cost of the certificates as well as the way in which phytosanitary certificates are requested.

312 IAC 18-6

This rule complements and works with IC 5-14-3 Access to Public Records. This rule also complements federal rules and regulations regarding confidential business information. DEPP is able to provide quicker service at a lower cost to the industry through USDA/APHIS under this rule.

The length of time since the rule was last reviewed under this section or otherwise evaluated by the agency, and the degree to which technology, economic conditions, or other factors have changed in the area affected by the rule since that time.

312 IAC 18-1

The rule was last reviewed in 2008. There have been no changes in technology, economic conditions or other factors which would apply to this rule. Nor have there been any changes that would warrant a revision to the rule.

312 IAC 18-2

The rule was reviewed and readopted in 2008. There are no changes in technology that would impact the rule. Economic conditions and other factors have impacted the rule through international trade. These changes include the artificial movement of pests and pathogens which has increased in number and occurrences. Currently Indiana is faced with multiple exotic pests that may require the use of this rule via quarantine if they are introduced and detected in Indiana.

312 IAC 18-3

The majority of the rule was reviewed and readopted in 2008. Other subsections of the rule including 312 IAC 18-3-14 through 18-3-21 have been readopted and adjusted in the recent years. These sections are currently and frequently under review. Modification to the current rule occurs as the pest or pathogen spreads naturally or artificially. There are no changes in technology that would impact the rule. Economic conditions and other factors have impacted the rule through international trade. These changes include the artificial movement of pests and pathogens included in the rule which have increased in number and occurrences. This has also required the addition of new sections to the rule to address new pests or pathogens such as 312 IAC 18-3-22 production of pest and pathogen free nursery stock, 312 IAC 18-3-23 prohibited invasive aquatic plants, and 312 IAC 18-3-24 control of thousand cankers disease.

312 IAC 18-4

September 2008 was the last time that this rule was reviewed. The only subsection of this rule that is currently under review for modification is section 312 IAC 18-4-4 “Certification of strawberry plants; special requirements”. The DEPP is collecting information to determine if the subsection should be modified to account for the natural progression of the pests and pathogens that are mentioned in the rule. The reduction of businesses that are currently growing strawberry in the State of Indiana will also play a role in determining if this rule should be modified. At this time, this subsection should continue to remain in the current rule. The rest of the rule is not subject to change as there have been no changes in technology or economic conditions that would merit revision.

312 IAC 18-5

The last time this rule was reviewed was in September 2008. There have been advances in technology since the last review period in the means of requesting and issuing phytosanitary certificates. Currently the DEPP utilizes the Phytosanitary Certificate Issuance and Tracking System (PCIT) online phytosanitary certificate request system. However, this rule does not set guidelines for submission of phytosanitary certificate requests by the public, therefore the rule does not need to be modified for the use of PCIT.

The DEPP is monitoring the amount man hours devoted to inspections of plant materials to determine whether current fees are sufficient to support expenses associated with issuing a phytosanitary certificate. The current DEPP phytosanitary certificate fee is fifty dollars (\$50) for a state or federal phytosanitary certificate. The current USDA/APHIS fee for a federal phytosanitary certificate is \$116. At this time, these changes in technology, economic conditions and other factors do not warrant a need to amend the current rule.

312 IAC 18-6

The rule was reviewed and readopted in 2008 and there are no changes in technology, economic conditions or other factors that would impact the rule.

Review under IC 4-22-2.1-5

**REVIEW OF MOST RECENT SMALL BUSINESS IMPACT ANALYSES
LSA Document # 14-105**

The degree to which the factors analyzed in a previous economic impact statement have changed since the statement was prepared

Proposed is the readoption of 312 IAC 18 in its entirety and without amendment. 312 IAC 18-1 provides definitions needed to implement the rules in 312 IAC 18. 312 IAC 18-2 establishes procedures to declare an infested area and create quarantines. 312 IAC 18-3 identifies pests and pathogens and establishes control efforts to reduce the threat of invasive species in Indiana. 312 IAC 18-4 regulates nurseries and nursery stock. 312 IAC 18-5 establishes fees for special services provided by the division. 312 IAC 18-6 protects the intellectual and technical knowledge of businesses that have permits and certificates with the division.

312 IAC 18 was last readopted in 2008 under LSA Document #08-76(F); however, a fiscal impact analysis was not required at that time. Since 2008, 312 IAC 18-3 has been amended several times through LSA Documents #09-85(F), #11-740(F), #12-50(F), #12-511(F), and

#12-514(F). Following are the previous economic impact statements prepared for the above referenced rule packages amending 312 IAC 18:

LSA Document #09-85(F)

Amendments were made to the number of counties that were considered quarantined areas. The addition of five counties was added to the quarantine for Emerald Ash Borer. The primary benefit of the proposed rule was a reduction in artificial spread of the emerald ash borer. The reduction of spread of this pest directly correlates to a reduced mortality of ash trees in urban and rural settings outside the quarantined area. Fewer ash trees infested with the emerald ash borer equates to less removal of dead trees for private homeowners, less value loss to the timber industry, and increased value to existing habitat in Indiana's natural resources and forests. Secondary benefits to the proposed rule include increased awareness of the damage that invasive pests like the emerald ash borer have on the natural resources, the industry and the public; advances in forest management techniques; and improvement in conducting forestry business operations.

IC 4-22-2.1-5 Statement Concerning Rules Affecting "Small Businesses"

Estimated Number of Small Businesses Subject to This Rule:

Several small businesses in Indiana will be impacted by the proposed rule. Types of small businesses subject to this rule include: Nurseries/Nursery Dealers, Sawmills (Primary and Secondary), Logging Companies/Timber Buyers, Arborists, Campgrounds, and Firewood Producers/Retailers. For the townships included in LSA Document #09-85, thirty-nine (39) businesses are impacted by this rule.

Estimated Average Annual Reporting, Record Keeping, and Other Administrative Costs Small Businesses Will Incur For Compliance:

In order to process regulated material from these or other quarantined townships the small business may need to apply for and have in place compliance agreements approved by the DNR, and may have to obtain certificates of inspection. Though the compliance agreement will be created and processed by the DNR, the small business owner will need to initiate the process by applying for and meeting guidelines set by the compliance agreement. It is estimated that each business will incur a cost of 0.5 man days to complete the paperwork to initiate a compliance agreement. Some businesses, primarily sawmills, logging companies, and firewood producers, will need a federal compliance agreement from the USDA/APHIS if they sell/move regulated items across the state line. Depending on the business in question, additional steps may be required to mitigate for Emerald Ash Borer.

Nurseries will need to ensure that they keep accurate records of recipients of ash tree stock being sold within these townships, ensuring that these trees do not leave the quarantined township. There is no anticipated cost for the nurseries to maintain records of the sale of ash trees.

Sawmills will need to keep records of the origin of ash materials and how it is being mitigated to prevent development and spread of emerald ash borer. Logging Companies also need to keep records of the origin of ash, whether it has been mitigated, and where the ash is delivered or sold. Both Sawmills and Logging companies will need to provide shipping documents and inspection certificates for the sale and movement of ash. They will also need to maintain records and have them available for inspection by the DNR or USDA/ APHIS. To maintain and manage records, it is estimated that 0.5 man hours per shipment is required. The estimated number of man days for each Sawmill or Logging Company to maintain proper management of all records within the business is 0.5 man days per month. Assuming that the average employee earns fifteen dollars (\$15.00) per hour, the annual reporting and record keeping costs to each sawmill and logging company would be \$720.00 per year.

Arborists will also need to have compliance agreements in place and record exactly how and where ash materials are disposed of. Industry chippers under compliance agreements with the IDNR are responsible for keeping records. These records include routine engine maintenance, length of time the chippers are run, and how often chipper blades are sharpened, adjusted, or

replaced. Paperwork and administrative impact is estimated to be less than six (6) man days per year. Assuming that the average employee earns fifteen dollars (\$15.00) per hour, the annual reporting and record keeping costs to each small business would be \$720.00 per year.

Campgrounds (private and public) will not need compliance agreements. However, if they are in a quarantined township and sell firewood that may leave the quarantined area, they will need a compliance agreement and will be required to mitigate the firewood. It is estimated that campground owners will only sell firewood for use on their campground. The additional administrative cost for campgrounds is firewood management which includes training staff to ask campers if they brought firewood, exchanging firewood with campers and collection and burning of firewood left at campsites. These administrative costs are not the result of the quarantine but the result of Emerald Ash Borer presence near their campground. Thus, there is no anticipated record keeping or administrative cost for campgrounds.

Firewood Producers that move regulated materials outside of the quarantined areas would require a compliance agreement. The analysis by the Division of Entomology and Plant Pathology of registered businesses found one firewood producer in the quarantined area. The administrative cost for the Firewood Producer in the quarantined area is estimated to be the same as the Sawmill/Logging Companies.

Estimated Total Annual Economic Impact on Small Businesses To Comply:

Nurseries and Nursery Dealers in quarantined townships will most likely stop sale of ash seedlings or trees due to the emerald ash borer's impact in the market. The trees can not be sold and moved outside the quarantined area because the only method to certify the tree free of the emerald ash borer would kill the tree. The economic impact to each of these small businesses in loss of revenue will be determined by how much ash material each business currently has in stock. Wholesale a two (2) inch caliper ash tree can be sold for approximately one hundred and ten (\$110.00) dollars. Retail each tree may be sold for approximately one hundred and seventy five (\$175.00) dollars. Thus, the total annual economic impact may be a few hundred dollars to several thousand dollars from the loss of ash trees not sold and removed from inventory.

The impact of the emerald ash borer and the USDA/APHIS quarantine, which was instituted in 2006, has reduced if not completely eliminated the sale of ash trees in Indiana. Once the ash trees are removed, the nursery will have no further impact from the quarantine, and will not have any economic impact to comply with the quarantine.

If logs move during the flight period of the emerald ash borer, adult borers may emerge from the logs awaiting processing. If the logs move during the non-flight period of emerald ash borer to a sawmill and are not processed before the flight period, they are also a risk to spread emerald ash borer. Primary sawmills, those that process logs into sawn lumber, are a risk of spreading emerald ash borer from an infested forest. Secondary sawmills pose less of a threat of spread as these sawmills typically handle sawn lumber or other material that has already been mitigated in a manner that would decrease the likelihood of spreading emerald ash borer. Logging Companies/ Timber Buyers also pose a threat of spreading the emerald ash borer by moving infested trees. The economic impact to these small businesses would only apply if the small business in question handles ash material.

The economic impact to Sawmills and Logging Companies/ Timber Buyers involves additions and changes to the business operation to comply with the quarantine. These changes involve movement of logs from the forest to the sawmill in a manner to comply with the quarantine. It also involves handling and sawing of ash logs in a timely manner to comply with the quarantine. Making these additions and changes may incur additional operating costs for these small businesses. The business operation will change during the summer period because moving ash logs from or through quarantined townships requires complete enclosure of the logs in the transportation vehicle. With this requirement sawmills and loggers may chose not to handle ash during the summer season, which is the flight period for emerald ash borer. The annual economic

impact for Sawmills and Logging Companies/ Timber Buyers to comply is estimated to be minimal, approximately \$720/year/business. This estimate does not include impacts should the business decide not to handle ash because of emerald ash borer.

For Arborists, it is estimated that the economic impact will occur through additional handling and hauling of regulated ash material. Arborists will need to ensure that ash materials being removed from private land will be mitigated (chipped to a size that makes the material unregulated) or disposed of at predetermined regulated destinations. The cost of that mitigation may be passed on to the consumer, or the Arborist may be able to absorb the cost through the sale of mitigated ash material.

The DNR, Division of Entomology and Plant Pathology has recently instituted a program to assist arborists and the chipper industry ensure compliance with the EAB Rule. This program certifies the chipper once per year with the business having a onetime cost of 0.5 man day per crew of two employees. At an estimated hourly wage of fifteen dollars per hour per crew member, the estimated cost to small business per chipper would be one hundred twenty dollars (\$120.00) per chipper. By placing chippers under compliance agreements for periods up to a year and monitoring the effectiveness of the chipper in question, the DNR is able to ensure that the industry is compliant with the rule and materials chipped by these chippers are deregulated prior to exiting the quarantined areas. The annual economic impact to Arborists to comply with the rule is estimated to be minimal, approximately \$840/year/business. This estimate includes the cost of having each of the businesses chippers under a compliance agreement for mitigation of regulated articles.

It is estimated that only a few campgrounds would ask for compliance agreements to transport firewood and that this is not a major source of revenue for these vendors. It will be at the private campground owner's discretion as to whether firewood will be allowed to be imported from other counties/townships. A ramification to campgrounds may be a small loss in revenue due to some customers not visiting the site if they are not allowed to bring their own firewood. However, it is the decision of the campground to not allow firewood and not a quarantine requirement. The annual economic impact to comply for campgrounds is estimated to be minimal as campgrounds that sell firewood typically import firewood from surrounding areas and most likely this firewood would be obtained from an area that is under the same quarantine level as the campground itself.

The economic impact to Firewood Producers involves changes to business operations to comply with quarantine requirements. This includes ensuring that regulated articles are not being moved outside of quarantined areas without mitigation. The annual economic impact to comply is estimated to be minimal.

Thirty nine small businesses may be impacted by this rule in the counties and townships that are proposed for quarantine. As stated above Nurseries/ Nursery Dealers and Campgrounds will not be impacted directly by the imposition of this rule. Nurseries and Nursery Dealers have already been impacted by the imposition of the federal quarantine instated by the USDA/APHIS and most heavily impacted by consumer awareness of the emerald ash borer and the possibility/probability of this invasive species infesting ash trees in Indiana. Campgrounds will not be economically impacted directly by the rule but by their willingness to comply with the rule to restrict movement of firewood into their private forests. If any economic impact would occur to private campgrounds, it would be in the form of lost business if customers refused to camp where they could not bring their own firewood. Sawmills (primary and secondary), Logging Companies/ Timber Buyers and Arborists will be impacted by the proposed rule. These companies will only be impacted if they utilize regulated material. Considering the current federal and state quarantines, many of the companies included in the table below (particularly secondary sawmills) may decide to stop using these materials in favor of non-quarantined materials.

The total potential economic impact to all small businesses in the proposed quarantined area is \$7,440.00. This analysis is based on the assumption that every small business in the quarantined

area would require a compliance agreement and utilize regulated materials. It is the opinion of this department that in reality only one half to three quarters of the small businesses analyzed in the proposed quarantine area would require a compliance agreement which would significantly reduce the potential economic impact to the small businesses in the quarantined area.

Justification Statement of Requirement or Cost:

The reported value of ash logs processed through Indiana mills on an annual basis is over eight (8) million dollars, another three hundred and sixty-four (364) million dollars has been estimated to be invested in urban and street trees not on private property. Currently, emerald ash borer has been found in 21 counties in the state of Indiana. By imposing this rule, the artificial and natural spread of this pest can be slowed. Counties that do not currently have an infestation of the emerald ash borer can be saved from the potential damage to their ash tree resource. By managing the artificial spread to non-quarantined counties/townships, the existing ash stands will continue to be utilized and the timber industry will be allowed to continue to support this faction of the economy in Indiana. The urban ash resource will continue to provide many benefits. Research will have time to develop more and better methods to manage this pest with the intent to maintain ash as a viable natural resource. Imposing this rule will also allow non-quarantined townships to continue to market ash materials to other states and encourage trade between the states and the markets outside of the nation. Without this rule, federal restrictions as well as further restrictions from non-regulated states may be placed on the state of Indiana, making it difficult to utilize existing ash in any form.

Regulatory Flexibility Analysis of Alternative Methods:

(A) Less stringent compliance or reporting requirements:

The compliance agreements are developed for each business with the intent to fit the requirements to each business operation to have minimal operational and economic impact but at the same time meet the biological needs of the rule. Thus, compliance agreements are made as flexible as biologically possible.

(B) Less stringent schedules or deadlines for compliance or reporting requirements:

For compliance, the biology of the emerald ash borer guides the establishment of time frames to operate under the quarantine. Until future research provides additional biological data to support amending the quarantine time frames, the current deadlines and schedule are as flexible as possible to manage the emerald ash borer effectively.

(C) The consolidation or simplification of compliance or reporting requirements:

The USDA/ APHIS and the DNR write compliance agreements. Each agency reciprocates on these compliance agreements. The State of Indiana recognizes and adopts the USDA/ APHIS compliance agreement to meet state needs for the small business. USDA/ APHIS will also recognize a State of Indiana compliance agreement. When required, these agencies work together to develop compliance agreements in consultation with each other. The monitoring of small businesses is also managed jointly to avoid duplication. These agencies work to consolidate and simplify compliance agreements and reporting requirements for all small businesses.

(D) Establishment of performance standards:

The quarantine establishes performance standards to meet biological needs to manage emerald ash borer. The standards are adapted to each small business' operational aspects to minimize impact to business but at the same time meet biological needs.

(E) Exemption of small businesses from part or all of the requirements or costs:

Each business operation is analyzed for the need to comply. Through analysis, the business operation may handle ash or ash products in a manner that complies with the rule. In this situation, they would be given a compliance agreement outlining the business operation and stating the operation method is in compliance with the rule. If the small business analysis finds that the business does not handle regulated material, the business does not need to meet the requirements of the rule and the rule has no impact. Analysis of the business is conducted upon request by DNR or USDA/ APHIS at no cost to the business.

LSA Document #11-740(F)

312 IAC 18-1-13

The amendment to 312 IAC 18-1-13 updated the definition of “pest” or “pathogen” to include all manner of invasive pests in Indiana. The Division of Entomology and Plant Pathology regularly conducts inspections of nursery stock, agricultural crops, natural resources and apiculture. Addition of the words “fungus, parasitic plant, mollusk, and exotic weed” to the definition supports the current inspections. The amendment brings the definitions in Administrative code into alignment with the Indiana Code definition of “pest or pathogen” (IC 14-8-2-203). The amendment was recommended by the Indiana Invasive Species Council and passed in P.L. 17-2009, SEC.1.

312 IAC 18-2-2

The amendment provides better administration of quarantines and other measures to address exotic invasive pests and pathogens. 312 IAC 18-2-2 allows the director to establish quarantine boundaries that are easier for public and industry understanding and compliance. With the modification, quarantine boundaries may now be drawn to follow geographical boundaries or other landmarks that are easier for the general public to follow. In addition, the change also provides the ability to create boundaries that are more biologically sound. Establishing quarantines is an effective management tool as it provides awareness of the pest problem and stimulus for the public to take the correct action.

312 IAC 18-3-22

Fumigation treatment is recommended by the Department to support the production of seedlings for reforestation and to meet quarantine requirements. 312 IAC 18-3-22 was added to set standards for pre-plant soil fumigation of seedling nursery beds. The amendment brings the definitions in Administrative code into alignment with the Indiana Code IC 14-24-5-3 “Certification of nursery stock; preferred fumigation treatment”, which requires that the division communicate to nurserymen that soil fumigation is preferred to produce pest and disease free forest seedlings; and that fumigation of seedling beds before seeding is an official control treatment to assure pest free nursery stock for natural resources purposes.

IC 4-22-2.1-5 Statement Concerning Rules Affecting Small Businesses

Estimated Number of Small Businesses Subject to this Rule:

Small businesses subject to this rule would include nursery growers, nursery dealers, bee keepers, pet stores, firewood producers, sawmills, and timber buyer and their bonding companies. A total of 7,323 small businesses will be impacted by the implementation of this rule.

All small businesses in Indiana where agricultural, horticultural, or sylvan products are being grown, shipped, sold or stored are subject to this rule change. Under 312 IAC 18-2-2, the Division of Entomology and Plant Pathology may inspect any site in Indiana suspected of being infested with a pest or pathogen. All small businesses before this rule change and after the proposed rule change are subject to the proposed rule change. Thus, there is no difference in the number of small businesses affected by the proposed rule change.

Presently there are 364 nursery growers licensed in the state of Indiana. Of those, less than five currently utilize pre-plant soil fumigation as a method of treatment for forest seedling beds to meet quarantine requirements and ensure pest and pathogen free seedlings.

Estimated Average Annual Reporting, Record Keeping, and Other Administrative Costs Small Businesses will Incur for Compliance:

Businesses subject to this rule currently have no annual reporting, record keeping, or administrative costs and the change in this rule will not require any changes to the current method of conducting business.

Businesses subject to 312 IAC 18-2-2 may or may not have annual reporting, record keeping, or administrative costs. They only have annual reporting, record keeping, or administrative costs if they are currently in a quarantine area. The rule change will not alter the annual reporting, record keeping, or administrative costs. The rule change will not create or amend any current quarantine (312 IAC 18-

3-12; 312 IAC 18-3-14; 312 IAC 18-3-18; 312 IAC 18-3-20; 312 IAC 18-3-21) Thus, change in this rule will not require any changes to the current method of conducting business.

Businesses currently subject to 312 IAC 18-3-22 this rule are required to keep detailed records of fumigants, restricted use pesticides and other chemicals being used on their property. These rules are enforced by the Office of the Indiana State Chemist. Adoption of this rule will not place any further impact on the businesses already conducting these measures.

Estimated Total Annual Economic Impact on Small Businesses to Comply:

There will be no economic impact on small businesses to comply with the proposed rules as the proposed rules do not require these businesses to change their current daily practices of conducting business.

Justification Statement of Requirement or Cost:

There are no requirements or costs imposed on a small business by 312 IAC 18-1-13 and 18-2-2. These two proposed rules do not add any requirement or cost to a small business that is not already addressed under IC 14-24 and 312 IAC 18-2. All businesses will continue doing business as they have been after the adoption of these rules.

The proposed rule change for 312 IAC 18-2-2 supports the requirement under IC 14-5-3 to certify nursery stock apparently pest and pathogen free. It also supports the requirement to ship nursery stock out of Indiana pest and pathogen free to meet the requirements of the destination state. The requirement and cost with 312-IAC 18-3-22 is the requirement that already exists from the Office of the Indiana State Chemist, involved with record keeping and recording the use of restricted pesticides (IC 15-16-5-59). The proposed rule change does not create any additional or new requirements or costs.

Regulatory Flexibility Analysis of Alternative Methods:

There is no economic impact expected or proposed with the adoption of these three rules. There is no compliance or reporting requirement. There is no design or operational standards imposed on the regulated entities. Therefore in the case of the three proposed rules, alternative methods are not warranted.

LSA Document #12-50(F)

The purpose of this rule is to protect the aquatic resources of Indiana's lakes, rivers, and wetlands from the establishment of aquatic invasive plants that occur in trade. When invasive aquatic plants are intentionally or accidentally released into public waterways, the Indiana Department of Natural Resources (DNR) responds to infestations to eradicate or control them. Invasive aquatic plants reduce recreational opportunities, which have an economic impact on local businesses that rely on those recreational users. They lessen real estate values when they become established which causes an impact to the local economy. They can also impact water utility withdrawals (weeds clog water intake screens) which adds a financial burden to the industry relying on that water. Economic burdens apply to DNR as well as the community surrounding the infested site.

IC 4-22-2.1-5 Statement Concerning Rules Affecting Small Businesses

Estimated Number of Small Businesses Subject to this Rule:

There are approximately 380 licensed nursery growers registered in the state. It is estimated that 12 of these nurseries produce aquatic plants and only a portion of these would produce any of the species being considered for regulation. There are nearly 4,000 retailers in the state that sell plants including retail landscape, aquarium stores, and other retail outlets. Of these retail outlets, it is estimated that one-third sell aquatic plants and an estimated 200 of these may actually sell species proposed for regulation.

Marinas and businesses that specialize in watercraft repair, removal, and storage are subject to this rule since they must inspect the equipment to be certain there are no regulated plants present. It is

estimated that 400 small businesses in Indiana specialize in these types of services, and would be impacted by the rule.

Estimated Average Annual Reporting, Record Keeping, and Other Administrative Costs Small Businesses Will Incur for Compliance:

There is no reporting, record keeping or administrative costs imposed on small businesses as a result of this rule.

Estimated Total Annual Economic Impact on Small Businesses to Comply:

It is expected that the economic impact to production nurseries, wholesalers and retailers will be in disposal of existing stock. After a business is in compliance, there would be no annual economic impact. Businesses that produce or sell regulated species will need to eliminate all existing inventories of the regulated species. Currently only seven of the 28 species proposed in this rule have a presence in trade. A typical inventory for the estimated 200 retail outlets that may offer these plants for sale would range from ten to 50 plants of each of the seven species.

Economic loss in inventory for these businesses is expected to be minimal. The species proposed for regulation are relatively inexpensive plants that range in price from \$3 to \$7 per plant. If a business has to eliminate an inventory of 100 plants of any of the species, at an average of \$5.00 per plant, total retail cost for these plants would average approximately \$500 per retail outlet. It would be unusual that a business would have all seven species with this level of inventory, however; so the economic impact per business could be much lower. Other than the possible destruction of regulated species inventory, there should be no other economic loss to these businesses.

Through education outreach provided by the IDNR, businesses who sell aquatic plants will learn about the rule prior to final adoption. This will give these businesses time to adjust their inventory and not order in a supply of the species as rule promulgation nears. If this is the case, they would have little inventory to eliminate. The winter is generally when retail outlets order plants that they will sell during the growing season. As the rule progresses and prior to retailers placing their orders the Department will notify retail outlets that species may be prohibited in the future.

The annual economic impact for marinas and boat repair, removal, and storage businesses will be minimal. Inspection and hand removal of all plant material takes very little time. For a 30-foot recreational boat, it is expected that the visual inspection and hand removal of all plant material from the boat and trailer may take 15 minutes. At \$10 per hour, inspection and removal would cost \$2.50. An average business may remove 30 boats a month during the 5-month boating season costing the business a total of \$75 in labor per month. No special equipment is necessary to clean plant material from aquatic equipment.

Justification Statement of Requirement or Cost:

17 of the 28 species that are proposed in this rule are currently regulated by the federal government as “federal noxious weeds”. These species should not be in trade because federal rules restrict their movement. Federal noxious species are regulated by the federal authorities for interstate movement only. These authorities are not able to regulate intra-state movement, if a noxious weed already exists in Indiana or is able to enter the state without the knowledge of the federal regulatory body these authorities would not have the ability to regulate these species. These species are included in this rule to allow for enforcement by Indiana authorities rather than relying on federal enforcement. Having a companion rule by the state that mirrors federal regulations allows the federal authorities to try to keep a species from entering the state while the intent of the proposed rule is to prevent movement within the state.

A risk assessment tool was developed by a group of aquatic invasive species experts and members representing the aquatic plant trade. Results from the risk assessment were used to select the species that should no longer be allowed in trade in Indiana. These species are known to become invasive when released and can alter existing ecosystems.

Some of the species proposed for regulation have been in trade for many decades. Originally most were used in aquariums. Eventually it was discovered that a common source of infestation is through improper disposal of aquarium stock into a body of water. Another source of infestation is due to the recent popularity of water gardens which has resulted in the plants being used in outdoor environments where they can occasionally escape. When an invasive species escapes into a lake or pond, they displace native aquatic plants, cause fish population imbalances, and reduce recreational opportunities. A reduction in recreation causes a loss to a lakes local area economy and the surrounding natural resources.

There are numerous other aquatic plants currently in trade that can be used to replace the species proposed for regulation. Wholesale and retail outlets will simply replace the invasive species that are proposed for regulation with a non-invasive species that will have similar customer appeal. There are many plants with similar characteristics to the species proposed for regulation that can be substituted that do not pose a threat to the environment. Other than the possible destruction of regulated species inventory, there should be no other economic loss to businesses.

Eliminating invasive species from infested lakes and ponds can be difficult and expensive. A project to eliminate Brazilian elodea from 109-acre Griffy Lake in Bloomington cost nearly \$150,000 over two years. It may cost approximately \$60,000 to eradicate parrot feather from an 18-acre public lake in Indiana. A project to eradicate hydrilla from Lake Manitou, a 735-acre natural lake, will likely cost in excess of \$2 million when the project is complete. The small cost or inconvenience to take an invasive plant species out of trade pales in comparison to the cost to eradicate a species once the species escapes into the environment.

Regulatory Flexibility Analysis of Alternative Methods:

One alternative to lessen the impact of the destruction of a business' inventory of the proposed species to be regulated is to propose a phase in period where businesses could sell their remaining inventory but not continue to replenish their supplies. This in reality is what is expected to happen over the coming months as this rule becomes effective. Unfortunately, as businesses continue to sell the regulated species to deplete their inventory, there is the risk that these plants will be released in waters throughout the state.

Another alternative to this regulation is that businesses could warn consumers as to the invasiveness of the species listed in the proposed rule. If businesses effectively express warnings to the consumers and have a less invasive plant as an alternative to be used in place of the listed species, a certain amount of protection could be achieved. If managers or owners of these businesses do not understand or aren't concerned about the level of potential invasiveness of these listed species, if they do not effectively warn consumers of its invasive characteristics, or if they do not provide alternative plants to substitute for the listed species, this option will not be suitable to stop the spread of invasive plants. It is unlikely that a strategy such as this would have the desired outcome of preventing further introduction of these invasive species into Indiana waters.

Convincing a customer to not purchase something in supply is not typically considered a good business practice so it is unlikely that this is a viable option, especially, if the invasive material is cheaper or easier for the business to source. To ensure effective measures are met it would be best to teach the store not to purchase the material at all and then ask them to pass the word on to customers to stay away from invasive species or dispose of material in a manner that will not allow these species to spread.

LSA Document #12-511(F)

The primary benefit of this rule is protecting the walnut trees in Indiana forests. The value of walnut saw logs in Indiana forests is estimated to be eight hundred (800) million dollars. There are currently no mitigation methods to destroy Thousand Canker Disease (TCD) in walnut trees. The potential economic loss in international and national markets for Indiana walnut timber would be great if TCD becomes established in Indiana. The federal government has decided to not

become involved in regulating the movement of this pest pathogen complex which means that each state is left to protect their walnut industry themselves. Without restriction or regulation of walnut material of some form the potential loss of walnut resource in Indiana would be catastrophic to the industry.

LSA Document #12-511

IC 4-22-2.1-5 Statement Concerning Rules Affecting Small Businesses

Estimated Number of Small Businesses Subject to this Rule:

There are currently five (5) primary timber companies that purchase materials from Thousand Canker Disease (TCD) infested states and are affected by this rule. It is estimated that five (5) more timber companies could be affected by this rule. The one hundred and eighty (180) secondary hardwood manufacturers (businesses that make furniture and other walnut products from kiln dried lumber) are not expected to be impacted by this rule. This rule is not anticipated to impact companies that do not deal with the timber industry.

Estimated Average Annual Reporting, Record Keeping, and Other Administrative Costs Small Businesses Will Incur for Compliance:

It is estimated that each business will incur a cost of 0.5 man days (or 4 hours) to complete the paperwork to initiate a compliance agreement for TCD. Assuming that the average employee earns fifteen dollars (\$15.00) per hour, the estimated annual cost to initiate a compliance agreement is sixty dollars (\$60.00) per year. It is also assumed that the fees associated with obtaining a phytosanitary certificate in the state of origin will not be borne by the small businesses of Indiana. The current general practice for companies under compliance agreements is that either the business selling the material or the exporting/shipping company obtains the compliance agreement at the state of origin and pays any fees.

Estimated Total Annual Economic Impact on Small Businesses to Comply:

The anticipated impact is administrative costs outlined above in amount of sixty dollars (\$60) per year per business that will be affected by this rule. With a maximum of ten (10) businesses that may be impacted by the rule, the total economic impact to small businesses in Indiana may be six hundred dollars (\$600) per year.

Justification Statement of Requirement or Cost:

Costs associated with rule with an estimated maximum impact to the entire state being six hundred dollars (\$600) per year are minimal in comparison to the damage that can be done to the walnut industry should this pest and pathogen complex be allowed to invade Indiana. Potential loss of walnut resource in Indiana would be upwards of eight hundred million dollars (\$800,000,000) (information taken from the saw log value from 2004-2008 Indiana forest inventory analysis). In addition, the wildlife that utilizes the walnut tree as a food source would be heavily impacted.

Regulatory Flexibility Analysis of Alternative Methods:

There are three alternatives to this rule: 1) allow all materials into the state without determining the state of origin, 2) prohibit all out of state origin walnut material from entering the state, or 3) prohibit/ regulate all walnut material originating in TCD positive states from entering the state.

Allowing all material into the state without regard to the state of origin could be catastrophic to walnut timber industry. The current estimated value of walnut in Indiana is eight hundred million dollars (\$800,000,000) in saw log value, several million in veneer log value, as well as the aesthetic and wildlife value that cannot be estimated. These estimates do not take into account the loss of logging, hauling and sawmill jobs that could occur if TCD is established in Indiana causing walnut trees to die. Without inspecting the logs upon arrival, the State of Indiana would be creating an avenue in which an infestation of the pest and pathogen complex could easily enter and spread throughout the state.

Prohibiting all out of state walnut material or even material originating in TCD positive states would also be damaging to the walnut timber industry. Several hundred thousand dollars worth of

walnut saw logs and veneer logs enter Indiana each year from Tennessee alone. If more states find TCD in their forests, these high value walnut logs would not be allowed to enter Indiana which would cause reduced revenue in Indiana businesses. The proposed rule provides protection to Indiana's walnut resources while still allowing companies to conduct business with TCD positive states.

LSA Document #12-514(F)

The primary benefit of the rule is a reduction in artificial spread of the gypsy moth. The reduction of spread of this pest directly correlates to a reduced mortality of trees in urban and rural settings outside the quarantined area. Fewer trees infested with gypsy moth equates to less removal of dead trees for private homeowners, less value loss to the timber industry, and increased value to existing habitat in Indiana's natural resources and forests. Secondary benefits to the proposed rule include increased awareness of the damage that invasive pests like the gypsy moth have on the natural resources, the industry and the public; advances in forest management techniques; and improvement in conducting forestry business operations.

IC 4-22-2.1-5 Statement Concerning Rules Affecting "Small Businesses"

Estimated Number of Small Businesses Subject to This Rule:

Several small businesses in Indiana will be impacted by the proposed rule. Types of small businesses subject to this rule include: Nurseries, Sawmills (Primary), Campgrounds, Firewood Producers/Retailers, Moving Companies, Recreational Vehicle (RV) Manufacturers and Retailers, Boat Retailers, Mobile Home Manufactures and Retailers, Mobile Home Transporters, and Certified Pesticide Applicators. There are estimated to be one hundred twenty one (121) businesses in St. Joseph County and seventy seven (77) businesses in La Porte County that may be impacted by this rule.

Estimated Average Annual Reporting, Record Keeping, and Other Administrative Costs Small Businesses Will Incur For Compliance:

In order to move regulated material from these or other quarantined counties, the small business will need to apply for and have in place compliance agreements with the Department of Natural Resources Division of Entomology and Plant Pathology (DNR) or USDA Animal Plant Health Inspection Service Plant Protection and Quarantine (USDA APHIS PPQ), and may have to obtain certificates and limited permits of inspection. Though the compliance agreement will be created and processed by the DNR or USDA APHIS PPQ, the small business owner will need to initiate the process by applying for and meeting guidelines set by the compliance agreement. It is estimated that each business will incur a cost of 0.5 man days (or four hours) to complete the paperwork to initiate a compliance agreement. Assuming that the average employee earns fifteen dollars (\$15.00) per hour, the estimated annual cost to initiate a compliance agreement is sixty dollars (\$60.00) per year.

Nurseries will require a compliance agreement. They will need to send a copy of their compliance agreement with each shipment they send out of the quarantine counties. There is no anticipated cost for the nurseries to attach a copy of the compliance agreement as each nursery is inspected annually by the DNR for their nursery license per IC 14-24-5.

Sawmills will need to obtain a compliance agreement with USDA APHIS PPQ. This will require a two (2) hour training session on Accurate Statements. This training will need to be completed every year. Each shipment leaving the quarantined area will need to have an Accurate Statement attached to the way bill or other shipping documents. A copy of the Accurate Statement must also be sent to the USDA APHIS PPQ for each shipment. To maintain and manage records, it is estimated that 0.5 (1/2) man hours per shipment is required. The estimated number of man days for each Sawmill to maintain all of the proper records within the business is 0.5 man days (or four hours) per month. Assuming that the average employee earns fifteen dollars (\$15.00) per hour, the annual reporting, record keeping and training costs to each sawmill would be \$750.00 per year.

Certified pesticide applicators may obtain a compliance agreement with the USDA APHIS PPQ to perform inspections and prepare inspection documents for businesses and private citizens. The administrative costs associated with the compliance agreement are estimated to be the same as for sawmills. In addition, the expense for the certified pesticide applicator to obtain a compliance agreement will be offset by a means to provide services and generate business revenue.

Campgrounds (private and public) will not need compliance agreements. Regulated material brought in to the campgrounds will be the property of the campers and not the campground. It will be the responsibility of the campers to make sure they are not violating this quarantine. Thus, there is no anticipated record keeping or administrative cost for campgrounds.

Firewood Producers and Dealers, and Boat Retailers that deliver material outside the quarantined county will need a compliance agreement. The administrative costs associated with the compliance agreement are estimated to be the same as the Sawmills.

Mobile Home and RV Manufactures, Retailers, and Transport companies also need to obtain a compliance agreement with USDA APHIS PPQ for Accurate Statements. However, they receive a rubber stamp with their compliance number for all of their paperwork. The estimated administrative costs are the same as for Sawmills.

Moving Companies will not need a compliance agreement. It is the responsibility of the customer to make sure their possessions are not harboring gypsy moth life stages. Thus, there is no anticipated record keeping or administrative cost for moving companies.

Estimated Total Annual Economic Impact on Small Businesses To Comply:

Nurseries in quarantined counties will only be impacted if they ship outside of the quarantined areas. If they plan to ship outside the area, they need to contact the DNR nursery inspector for their business. The inspector will conduct a Gypsy Moth egg mass survey of the nursery and surrounding area. If no egg masses are found, they can ship with just the compliance agreement. The inspection does not incur additional cost to the small business and attaching a copy of the compliance agreement or phytosanitary certificate will not incur additional cost to the business. State phytosanitary certificates are provided to licensed nurseries at no charge. If egg masses are found in the nursery or the surrounding area, the entire nursery needs to be treated with an appropriate insecticide prior to shipment.

The average nursery in Indiana is thirteen (13) acres. The average cost of treatment per nursery is six hundred dollars (\$600.00) for chemicals and one (1) man day for applying the chemical. Assuming the average worker earns fifteen dollars (\$15.00) per hour, the total labor cost would be one hundred twenty dollars (\$120.00). The total average treatment cost for the year would be seven hundred twenty dollars (\$720.00).

The economic impact on Sawmills will be minimal. In order to follow the compliance agreement, they need to inspect each load before it is shipped. If any life stage of Gypsy Moth is found, it needs to be removed from the shipment. This additional inspection should average 0.25 man days per shipment. Based on compliance agreements in current Gypsy moth quarantine areas, the average sawmill will send ten (10) shipments per month. Assuming the average worker earns fifteen dollars (\$15.00) per hour, the average annual cost for sawmills would be three thousand six hundred dollars (\$3,600.00).

Certified Pesticide Applicators will need a compliance agreement from the USDA APHIS PPQ if they chose to provide gypsy moth inspection services. They would be required to incur the cost of the annual training of two hours per employee trained and the cost of maintaining records required by the compliance agreement. This cost would be similar to the estimated cost for sawmills, at three thousand six hundred dollars (\$3,600.00) per year. This cost would also be offset by the revenue generated by providing inspections for citizens and other businesses and is estimated to be a positive impact to the business.

Boat Retailers, the Mobile Home Industry and the RV Industry will also see a small economic impact from this rule. They will need a USDA APHIS PPQ compliance agreement and their annual fees will be similar to sawmills, at three thousand six hundred dollars (\$3,600.00) per year. They will need to inspect each shipment leaving the quarantined counties for any gypsy moth life stage. After the inspection, they will need to stamp all of the paperwork with their compliance agreement number. The stamp will be provided by the USDA.

Firewood Producers and Dealers will only need a compliance agreement if they are moving firewood outside the quarantined area. A compliance agreement would require inspection of the material before it is moved out of quarantined counties. The economic impact is estimated to be minimal.

Campgrounds and Moving companies are not anticipated to have an economic impact from a loss of business due to the quarantine. There is no administrative economic impact from this rule. It is the responsibility of the campers and customers to ensure they are not moving any life stage of gypsy moth.

The total potential economic impact to small businesses in the proposed quarantined area is \$281,040.00.

Justification Statement of Requirement or Cost:

There are currently seven (7) counties quarantined for gypsy moth in Indiana. In 2008, the value of shipments from the timber industry in Indiana was eight (8) billion dollars. Gypsy moth will feed on 80% of trees in Indiana's forest. By imposing this rule, the artificial spread of this pest can be slowed. Counties that do not currently have a heavy infestation of gypsy moth can be saved from the potential damage to their forest resources. By managing the artificial spread to non-quarantined counties, the existing stands of trees will continue to be utilized and the timber industry will be allowed to continue to support this faction of the economy in Indiana.

Regulatory Flexibility Analysis of Alternative Methods:

(A) Less stringent compliance or reporting requirements:

The compliance agreements are developed for each business with the intent to fit the requirements to each business operation to have minimal operational and economic impact but at the same time meet the biological needs of the rule. Thus, compliance agreements are made as flexible as biologically possible.

(B) Less stringent schedules or deadlines for compliance or reporting requirements:

The schedules and deadlines for compliance and reporting are set at the least stringent schedule for small businesses and regulatory needs.

(C) The consolidation or simplification of compliance or reporting requirements:

The state quarantine area is also the boundary of the federal quarantine. Without implementing this rule the federal quarantine boundary would encompass the entire state. The adoption of the federal quarantine within the few counties that are generally infested by DNR prevents the impact of the federal quarantine to businesses in counties without gypsy moth. The USDA APHIS PPQ and DNR work together to administer the quarantine. USDA APHIS PPQ will take the lead for all compliance and reporting requirements. The DNR recognizes compliance agreements issued by USDA APHIS PPQ and does not duplicate this effort.

(D) Establishment of performance standards:

The quarantine establishes performance standards to meet biological needs to manage gypsy moth. The standards are adapted to each small business' operational aspects to minimize impact to business but at the same time meet biological needs.

(E) Exemption of small businesses from part or all of the requirements or costs:

Each business operation is analyzed for the need to comply. Through analysis, it may be determined that a particular small business does not move regulated material outside the quarantine area. In this situation, the business does not need to meet the requirements of the

quarantine and thus has no impact. Analysis of the business is conducted upon request by DNR or USDA APHIS PPQ at no cost to the business.

Any regulatory alternatives included in the statement under IC 4-22-2.1-5(a)(5)

Regulatory alternatives in the economic impact statements of rules 312 IAC 18-3-14, 18-3-18, 18-3-23, and 18-3-24 have been reviewed and alternatives to the current rule are not practical. Without these rules regulated articles would continue to move throughout Indiana spreading the infestations of invasive species. In each case the least stringent yet biologically viable methods have been utilized to reduce or eliminate movement of these pests and pathogens.

Any regulatory alternatives not considered by the agency at the time the statement was prepared could be implemented to replace one (1) or more of the rule's existing requirements

The five rules in question have been under review in recent years. Fiscal analyses have been completed in this time and regulatory alternatives that are available have been included in the analyses. At this time there are no viable regulatory alternatives that would control these pests as well as the rules that are currently in place.

Executive Order 13-03 required agencies to “suspend rulemaking action on any proposed rules for which a notice of intent to adopt a rule...was not submitted to the office of the *Indiana Register* on or before January 14, 2013.” These requirements were restated, along with additional compliance information, in Financial Management Circular 2013-01. On May 2, 2013 Christopher D. Atkins, Director, Office of Management and Budget, wrote to all agency heads stating the moratorium set forth in Executive Order 13-03 was not applicable to readoptions and that an exception did not need to be sought or received.

As specified by Executive Order 2-89 and Financial Management Circular 2010-4, fiscal analyses of the rule readoption proposal were submitted, along with a copy of the proposed rule language and a copy of the posted Notice of Intent to Readopt a Rule, to the Office of Management and Budget, the Legislative Council, and the Administrative Rule Oversight Committee on April 25, 2014. In a letter dated May 27, 2014, Brian E. Bailey, Director, State Budget Agency, recommended the proposed rule readoption be approved.

C. NOTICE OF INTENT TO READOPT AND RECOMMENDATION FOR FINAL ACTION

On April 2, 2014, the “Notice of Intent to Readopt” 312 IAC 18 was posted to the *Indiana Register* at 20140402-IR-312140105RNA as anticipated by IC 4-22-2.5-2 and IC

4-22-2.5-4. The notice indicated the intention to readopt the entirety of 312 IAC 18 without changes. The notice also provided that a person had 30 days to submit a written request to the Commission, through the Small Business Regulatory Coordinator, seeking to have a particular section of the rule readopted separately. If such a request had been made, the Commission would have been required to complete the full rule adoption process for the section requested to be readopted separately.

No written request was received. The Commission may either submit the rule for filing with the Publisher under IC 4-22-2-35 or elect the procedure for readoption under IC 4-22-2. The hearing officer recommends the Commission approve for readoption 312 IAC 18, without amendment, for subsequent filing with the Publisher.

Dated: June 16, 2014

Jennifer M. Kane
Hearing Officer